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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re CODIE J., a Person Coming Under the  
Juvenile Court Law.

MARIPOSA COUNTY DEPARTMENT OF  
HUMAN SERVICES,

Plaintiff and Respondent,

v.

CLIFTON T.,

Defendant and Appellant..

F045055

(Super. Ct. No. 1923)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Mariposa County. Wayne R. Parrish, Judge.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and Appellant.

Donna B. Kaiser, for Plaintiff and Respondent, Jimmy J.

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\* Before Dibiaso, Acting P.J., Cornell, J. and Harris, J.

Biological father Clifton T. appeals a juvenile court order returning 13 year-old Codie to the home of Codie's presumed father, Jimmie J.<sup>1</sup> Clifton contends the juvenile court exceeded its jurisdiction by finding Jimmie could not benefit from reunification services but that Codie should be returned to him nevertheless. Specifically, Clifton argues that the court's findings that Jimmie was incapable of benefiting from reunification services but that there was no detriment to Codie if returned to Jimmie's care are irreconcilable. For the reasons set forth below, we find no error and affirm the orders of the juvenile court returning Codie to Jimmie's custody.

### **Background**

Codie, now 13 years old, has lived with Jimmie since he was approximately two years old when his mother, Jimmie's wife Candy, apparently abandoned him. The current dependency began in May 2003 when Codie was detained after allegations of neglect.<sup>2</sup> Codie was removed from Jimmie's home and placed in foster care. The jurisdiction petition alleged ongoing neglect and emotional abuse by Jimmie that rendered Codie a child who fell within the provisions of Welfare and Institutions Code section 300.<sup>3</sup> Mariposa County Department of Human Services ("DHS") alleged Jimmie failed to treat a skin condition Codie had because he did not have the money to pay for the medicine, did not provide dental care for Codie, and failed to provide adequate food or supervision. The petition further alleged that Codie was exposed to domestic violence and abusive language while under Jimmie's care, and that Jimmie failed to ensure Codie received an education.

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<sup>1</sup> We will refer to the parties by their first names not out of disrespect, but for confidentiality purposes.

<sup>2</sup> The record also indicates a long history of state involvement regarding Codie's welfare in California, Oregon and Arkansas.

<sup>3</sup> Further statutory references are to the Welfare and Institutions Code.

In the meantime, in June of 2003, paternity tests confirmed Clifton to be Codie's biological father. The court ordered him added as a presumed father. Clifton was ordered to receive services in September of 2003. In November of 2003 the court ordered Codie placed with Clifton and continued the dispositional hearing.

At an August 2003 jurisdictional hearing the juvenile court accepted the parties' stipulation regarding the section 300, subdivision (b)(7) allegation (regarding Jimmie's failure to provide dental care) and dismissed the counts arising under subdivision (c) (serious emotional damage). The court then declared that Codie was a dependent child, ordered him removed from Jimmie's custody, and ordered further psychological testing for Jimmie.

The court ultimately received two psychology reports for Jimmie. The first psychologist diagnosed Jimmie with intermittent explosive disorder, antisocial personality disorder, and narcissistic personality features. The evaluator concluded Jimmie could not benefit from services. A second psychologist also diagnosed Jimmie with antisocial personality disorder and opined that Jimmie could not benefit from services. The evaluator felt Jimmie was incapable of caring for Codie, and informed social services that Jimmie had made threats against DHS social workers if Codie was not returned to him. DHS recommended no services be provided Jimmie.

A contested dispositional hearing took place in January of 2004. Jimmie presented witnesses who attested to his bond with Codie and the adequacy of his parenting skills. The juvenile court interviewed Codie, who testified that Jimmie was "pretty much always good" to him and always provided food, clothes and a place to live. Codie believed Jimmie loved him and Codie wanted Jimmie to be a part of his life. Jimmie also testified. He attempted to explain some of the findings in the psychology reports by stating he may or may not have been telling the truth to the psychologists; he was just "giving them answers." Jimmie testified he considered Codie his own son and wanted to raise him. He denied ever leaving Codie alone or not providing adequate food.

He claimed he had obtained the medicine for Codie's skin condition, and that Codie's failure to receive dental treatment was not his fault.

Codie's social worker testified in rebuttal that Codie had become a much happier child since leaving Jimmie's care. DHS argued that Jimmie should be denied reunification services and that Codie should remain in Clifton's care, but that Jimmie should get visitation. Clifton also argued Jimmie should be denied services. Codie's counsel expressed concern about the psychological evaluations of Jimmie, and counsel for Codie's mother also argued Codie should stay with Clifton.

The court took the matter under submission over the weekend, stating, "this is one of the most difficult cases I have had." After considering the case over the weekend, the court found the conditions that led to removal no longer existed and there would be no detriment to Codie if he were returned to Jimmie's care. The court found Jimmie to be a "marginal" parent, but recognized a strong bond between Jimmie and Cody. The court further found Jimmie could not benefit from services under section 361.5, subdivision (b)(2). The court returned Codie to Jimmie, stating, "I'm not convinced that he can't parent the child." The court ordered Codie returned to Jimmie under a plan of family maintenance that called for ensuring medical treatment for Codie, and also ordered liberal visitation for Clifton. Further, because all parties had apparently moved to Merced County, the court ordered the case transferred. Clifton filed a timely notice of appeal; DHS did not appeal the orders.

## **DISCUSSION**

### **Standing**

The parties initially dispute whether Clifton has standing to bring this appeal. While DHS filed a brief purporting to "adopt" Clifton's arguments on appeal, DHS never filed a notice of appeal and we thus do not have jurisdiction to consider its late-filed brief as an appeal from the dependency order. (See *In re Crystal J.* (2001) 92 Cal.App.4th 186, 189 [party has no standing to appeal a judgment that adversely affects only another

party who does not appeal]; *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439 [party who has not appealed from the judgment may not urge error on appeal]; *Adoption of Alexander S.* (1988) 44 Cal.3d 857, 864 [notice of appeal vests jurisdiction in appellate court].) However, as set forth below, we conclude Clifton has standing to bring this appeal on his own behalf.

“Generally, parents can appeal judgments or orders in juvenile dependency matters. [Citation.] However, a parent must also establish [he] is a ‘party aggrieved’ to obtain a review of a ruling on the merits. [Citation.] Therefore, a parent cannot raise issues on appeal from a dependency matter that do not affect [his] own rights. [Citation.] Standing to appeal is jurisdictional.” (*In re Frank L.* (2000) 81 Cal.App.4th 700, 703.) “To be aggrieved, a party must have a legally cognizable interest that is injuriously affected by the court’s decision. [Citation.] The injury must be immediate and substantial, and not nominal or remote. [Citation.]” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 948.) Here, Jimmie maintains that Clifton’s interest is neither immediate nor substantial and that Clifton had no “rights” that were affected by the court’s order. We disagree.

Jimmie relies primarily on *In re Carissa G.* (1999) 76 Cal.App.4th 731 to support his claim that Clifton was not aggrieved by the juvenile court’s actions. *Carissa G.* held that a parent lacked standing to appeal from the dismissal of a dependency petition because she was not the aggrieved party. (*Id.* at p. 738.) The order from which mother appealed in that case did not affect her relationship to, or rights with respect to, the child. The juvenile court here, however, effectively raised Clifton to presumed father status, and as a presumed father he was entitled to custody and services.<sup>4</sup> (§ 361.5, subd. (a); *In re*

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<sup>4</sup> While Jimmie argues on appeal that there can only be one presumed father and that Clifton is only a biological father, he never objected below when the court ordered Clifton “enjoined as a party in this action as a presumed father” and treated Clifton as a

*Zacharia D.* (1993) 6 Cal.4th at 435, 448-449.) Further, Clifton had an appointed counsel and was a party to the dependency action below. Jimmie is correct that Clifton had not acquired “custody” in a legal sense of the word since custody was vested with the Department. However, we are to liberally construe the issue of standing and resolve doubts in favor of the right to appeal, and Clifton, Codie’s biological father who was being treated as a presumed father, had physical custody of Codie, and was receiving services. (*Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 540.) Under these circumstances, Clifton was immediately and substantially injured by the order removing Codie from his physical custody.

Additionally, while Jimmie argues that Clifton’s remedy should be in family court if he seeks to acquire custody over Codie, we disagree that that necessarily limits his standing to appeal from the dependency orders. Unlike *In re Carissa G.*, *supra*, 76 Cal.App.4th 731, relied on by Jimmie, the order here directly affected Clifton’s current physical custody of Codie. The availability of a possible remedy in family court does not deprive Clifton of standing to challenge the juvenile court’s order that affected his rights. Accordingly, we will address his appeal on the merits.

### **Sufficient Evidence Supports the Juvenile Court’s Order**

Clifton argues that the juvenile court “exceeded its jurisdiction” by finding that, due to his mental health issues, Jimmie could not benefit from services but that there was nevertheless no detriment to Codie by returning him to Jimmie’s home. Clifton argues those conclusions are inherently inconsistent and, therefore, the court’s order returning Codie to Jimmie requires reversal. Alternatively, Clifton contends insufficient evidence

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presumed father by placing Codie with him and ordering services for him. A party who does not object at the trial court level waives the right to claim error on appeal, and Clifton was treated by the juvenile court as a presumed father. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150-1157.)

supports the conclusion that no detriment exists in returning Codie to Jimmie's care. As set forth below, we reject Clifton's argument that the court's section 361.5, subdivision (b)(2) finding is inconsistent with the no detriment finding, and further hold that sufficient evidence supports the no detriment finding.

### **The Court's Order**

When issuing its order returning Codie to Jimmie, the juvenile court made a true finding under section 361.5, subdivision (b)(2),<sup>5</sup> stating, "I find Mr. [J.] is not capable of accepting, due to psychological problems not able to accepting [*sic*] psychological services." Upon inquiry from counsel about the finding, the court acknowledged that Jimmie would be receiving family maintenance services and stated Jimmie would "receive services to the extent of family maintenance and specifically I have outlined areas that I believe Mr. [J.] needs assistance." Counsel further questioned the court on the finding, asking whether a true finding on section 361.5 (b)(2) necessarily indicated Jimmie was unable to adequately parent. The court then reiterated its findings,

"[Court] I find that he's incapable of accepting reunification services.

"[Counsel] Based on what?

"[Court] Based upon the psychological reports. I'm not convinced that he can't parent the child.

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<sup>5</sup> Section 361.5, subdivision (b)(2) provides:

"Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] ... [¶]

"(2) That the parent or guardian is suffering from a mental disability ... that renders him or her incapable of utilizing those services."

“[Counsel]: The court also then is making a finding there’s no detriment to the child’s physical and emotional well-being if he’s returned to the physical custody of Mr. [J.]?”

“[Court]: That’s true.

“[Counsel] It’s implicit in the court’s ruling that he is able to receive, capable of receiving family maintenance services?

“[Court]: Yes.”

The parties primarily focus their arguments on whether the court’s (b)(2) finding necessitates the conclusion that Jimmie is incapable of parenting Codie and, therefore, that the court erred in finding no danger or detriment in returning Codie to his care. However, because the court expressly found no substantial danger or detriment to Codie’s health if returned to Jimmie, the finding regarding reunification services is essentially superfluous. Once the court determined that no detriment existed to Codie if he was returned to Jimmie’s care, the question of whether Jimmie was capable of receiving reunification services under section 361.5 was irrelevant. Thus, the issue before us is whether substantial evidence exists to support the no detriment finding. (See *Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880- 881.) Under such standard of review, ““we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.”” (*Id.* at p. 880.)

### **The Record Supports The No Detriment Finding**

At the time of the contested dispositional hearing Codie’s dental needs had been met. Jimmie had cooperated in receiving his psychological evaluations, and presented multiple witnesses who testified positively about his relationship with Codie and his ability to parent him. Codie testified that Jimmie was “pretty much always good to me, I felt,” that there was always food in the house and clothes to wear, that Jimmie loved him, and thus he wanted Jimmie to be a part of his life. Jimmie testified he wanted to raise Codie and that he always provided food, supervision and shelter for him. Thus, there was



substantial evidence before the juvenile court to support the conclusion that there was no risk of detriment to Codie if returned to Jimmie's care.

The psychological evaluations, of course, concluded Jimmie was unable to parent Codie due to his mental health problems. After hearing all of the testimony and considering the case over a long weekend, the court expressly rejected the psychologists' suggestion that Jimmie could not adequately parent Codie. The trial court was not required to accept the psychologists' conclusions. The court's rejection of the psychological evaluations with respect to Jimmie's ability to parent Codie constituted a factual finding, which we do not disturb since it was supported by sufficient evidence. (See *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135 overruled on other grounds, *Rene J. v Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6 [appellate court's role is not to resolve conflicts in the evidence, make credibility determinations or reach findings of fact].)

**The (b)(2) Finding Does Not Require the Conclusion Jimmie Cannot Parent**

Clifton nevertheless insists that the (b)(2) finding necessarily means Jimmie cannot receive family maintenance services and cannot adequately parent. We do not agree that the court's (b)(2) finding is inherently inconsistent with its decision to return Codie to the home. In other words, we do not agree that the court's finding that Jimmie was incapable of benefiting from reunification services necessarily meant that he cannot adequately parent Codie.<sup>6</sup> While we believe it is probably a somewhat unusual

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<sup>6</sup> The family maintenance services that the court ordered are simply to help ensure Codie gets the care he needs. ("I'm going to order family maintenance visits for [Jimmie] with the specific purpose to assist [Jimmie] in providing for safe transportation and adequate home, food and medical care for the minor." We thus give no credence to the argument that a finding that *Jimmie* cannot benefit from reunification services (such as parenting classes) means *the family* (Jimmie and Codie) cannot benefit from family maintenance services.

occurrence, there is no inherent inconsistency in finding that Jimmie would not benefit from reunification services but was still able to parent this child. Codie's age, the fact the dental issues were now resolved, and the undisputed bond between Jimmie and Codie support the court's apparent conclusion that Jimmie suffered mental health problems that precluded him from learning to become a *better* parent but that he was not so inadequate as a parent to warrant having Codie taken away. "A parent's right to care, custody and management of a child is a fundamental liberty interest protected by the federal Constitution that will not be disturbed except in extreme cases where a parent acts in a manner incompatible with parenthood. [Citations.]" (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1828, 46 Cal.Rptr.2d 198 (*Marquis D.*)). Thus, the constitutional right of parents to make decisions regarding their children's upbringing precludes the state from intervening without clear and convincing evidence of a need to protect the child from severe neglect or physical abuse. (*Id.* at pp. 769-770; *Marquis D.*, *supra*, 38 Cal.App.4th at pp. 1828-1829.)

The juvenile court expressly determined here that living with Jimmie did not subject Codie to severe neglect or physical abuse. Again, that the court felt Jimmie's psychological problems precluded him from becoming a *better* parent by receiving services, and that the court found Jimmie to be a "marginal" parent, does not mean that Codie would be severely neglected or abused in his care. Thus, the court expressly found "there is no detriment to the child's physical and emotional well-being if he's returned to the physical custody of Jimmie [J.]" The record supports the finding.

#### **DISPOSITION**

The juvenile court's orders are affirmed.